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EXAMINER

SAINT CYR, LEONARD

ART UNIT

PAPER NUMBER

2626

NOTIFICATION DATE

DELIVERY MODE

03/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentcolorado@hhlaw.com



## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 01/09/09 have been fully considered but they are not persuasive.

Applicant argues that claims 25, and 29 now recite useful, concrete, and tangible result by reciting resolving the plurality of pre-requisite triggers for subsequent ones of the plurality of data sets in an order based on the AEOTT rating; scoring the plurality of data set based on the resolving steps; and based on said scoring, performing a predetermined action selected from the group consisting of blocking a URL, alerting an administrator and logging data (Amendment, page 3).

The examiner disagrees since the added newly limitations are also abstract ideas; and points out that the steps of: scoring the plurality of data set based on the resolving steps; and performing a predetermined action based on said scoring **are not claimed by the applicant.**

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 25, and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 25, and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As per the most recent interpretation of the Interim Guidelines regarding 35 U.S.C. 101, claims 25, and 29 define non-statutory processes because they merely manipulate an abstract idea without a claimed limitation to produce a useful, concrete, tangible result. Claims 25, and 29 reviewed in light of the specification, simply recite an abstract idea for linguistic analysis.

As can be seen by claims 25, and 29, these claims recite an abstract idea by setting forth the step of “initializing a Avoid Evaluation Of This Trigger (AEOTT) rating for a pre-requisite trigger; resolving the pre-requisite trigger based on a first data set; determining whether resolving the pre-requisite trigger caused an early exit; if resolving the pre-requisite trigger caused an early exit, decreasing the AEOTT rating; and if resolving the pre-requisite trigger did not cause an early exit, increasing the AEOTT rating”. These steps are abstract ideas.

Reviewing each claim as whole fails to show the transformation or reduction of subject matter to a different state of thing. Determining whether resolving the pre-requisite trigger caused an early exit; if resolving the pre-requisite trigger caused an early exit, is merely an abstract idea to encode a quantize signal, not a different state or thing.

If the acts of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter (Benson, 409 U.S. at 71-72, 175, USPQ at 676).

Art Unit: 2626

Furthermore, claims define nonstatutory processes if they simply manipulate abstract ideas (Warmerdam, 33 F.3d at 1360,31 USPQ2d at 1759). As for guidance to areas of statutory subject matter, see 35 U.S.C. 101 Interim Guidelines (with emphasis of the Clarification of Interim Guidelines For Examination of Patent Applications for Subject Matter Eligibility); as an example, in Alappat, the claimed output smooth waveform (consisted of lighting pixels on an oscilloscope/display) is a useful, concrete, tangible, final result; in Arrhythmia, the claimed useful, concrete, tangible, final result represented the condition of a patient's heart; in State Street, the claimed useful, concrete, tangible, final result was data output that represented a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

**Claim 25** is rejected under 35 USC 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps to be performed, a statutory process under 35 USC 101 must be tied to another statutory category (such as a manufacture or a machine) or transform underlying subject matter (such as an article or material) to a different state or thing. The steps in those claims can be performed manually without the use of a particular machine. Those claims could be done in a piece of paper, by determining all sets of triggers scores as claimed by the applicant. Thus, claim **25** do not define a statutory process.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEONARD SAINT CYR whose telephone number is (571) 272-4247. The examiner can normally be reached on Mon- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 2626

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LS

03/20/09

/Richemond Dorvil/

Supervisory Patent Examiner, Art Unit 2626